the average number of cars. *Held,* the state had this right, *Amer. Rep. Co.* v. *Hall,* 174 U. S. 70; and as the complaint did not charge that more than the average number of cars had been taxed, it will be presumed that assessment was regular.

WAR REVENUE TAX—EXPRESS COMPANIES, 20 Supt. Ct. Rep. 695. *Held,* under the war revenue tax of 1898, making it the duty of every express Company to issue a bill of lading, with a one cent stamp duly attached and cancelled, the Express Company could raise its charges to meet the tax and thus shift the burden upon the shipper. The court grounds its decision on the fact that there is nothing in the act that leads to the inference that it is unlawful to shift the tax; in fact being an indirect tax, it leads to a contrary inference. The reasonableness of the increased charge was not before the court, and the right of the Company to shift the burden was decisive of the question.

But Harlan and McKenna, J. J., in dissenting, held that the act made it the duty of the Company to provide and issue at his own expense, the bills with stamps attached and cancelled, but that whether the Company could then raise its charges to shift the burden presented no Federal question.

WILLS—COURTESY—DEVISE TO HUSBAND—ELECTION—HUSBAND'S ADMINISTRATION—LEGACIES—KERRIGAN ET AL. V. CONNELLY, 46 Atl. 227.—Testatrix devised a life estate in common to her husband and children in a portion of her realty, subject to payment of legacies out of rents. Husband, who received no other bequest, on failure of her executors, administered her estate and received all said rents. *Held,* that his action showed no election to take under the will in lieu of his more valuable right of tenancy by the curtesy.

The land, at his death, was held subject to the payment of the legacies, although he had received a sufficient amount in rents to satisfy them, as he did not receive said rents as administrator *c. t. a.* The burden of showing election rests on the party asserting it. *Worthington* v. *Wigonton,* 20 Beav. 67, 74. The mere acceptence of an appointment as an executor will not in general be deemed a waiver of curtesy. *Tyler* v. *Wheeler,* 160 Mass. 206, 35, N. E. R. 666.